

NORTH DAKOTA STATE LEGISLATURE
TAXATION COMMITTEE
TYPES OF POLITICAL SUBDIVISION INDEBTEDNESS
November 28, 2007

We have been asked to provide information to the committee regarding the types of indebtedness that may be incurred by political subdivisions.

INDEBTEDNESS

1. General Obligation Debt. Is debt that is backed by the full faith and credit of the issuing political subdivision, payable by an excess mill levy against all of the taxable property in the issuing political subdivision. In all but a few situations, general obligation debt cannot be issued without an approving vote of 60%. (BIG "D" DEBT.)

The Constitution of North Dakota, Art. X, § 15, limits political subdivision Debt to 5% of the assessed value of the taxable property in the political subdivision unless increased to 8% (10% for school districts) by a two-thirds vote.

2. Limited Levy General Obligation Debt. Is debt that is incurred by pledging a limited levy, such as building fund levies of 10 or 20 mills. Establishment of building fund levies requires a vote but other limited levy borrowings (correctional facilities, asbestos removal etc.) have been authorized by legislative enactment.

3. Special Assessment Debt. Is debt incurred to pay the cost of infrastructure construction, such as paving curb and gutter, water, sewer (sanitary and storm). The cost is assessed against benefited properties and is backed by the full faith and credit of the issuer in the event of default. Special assessment debt does not become General Obligation Debt until there is an anticipated or actual event default. No vote is required, but a protest period is required, except for water and sewer improvements. (Starts out as small "d" debt but can become big "D" debt.)

4. Revenue Debt. Most revenue debt incurred by political subdivisions is incurred to pay for the cost of construction of revenue generating utilities such as water and sewer systems. Rates charged for their use are pledged to the payment of the debt service on bonds issued to fund the cost of the system. No vote is required other than a 2/3ds vote of the governing body of the issuing political subdivision. (Revenue debt is always small "d" debt.)

Revenue debt also includes tax, grant and revenue anticipation bonds/notes such as tax anticipation certificates of indebtedness issued for taxes levied but uncollected and grants not received.

5. Appropriation Debt. Installment purchases of equipment, buildings etc. You will not find these transactions authorized or prohibited by state law. It is not big "D" debt because the debt service is subject to appropriation. The legal analysis for the

incurring of such debt has centered on the proposition that if a political subdivision has the power to purchase equipment or facilities that it has the implied power to do so on an installment basis. The problem with appropriation debt is that the issuer has no authority to spread an excess mill levy to pay the annual installment payments and the debt service funds have to be appropriated from general funds.

6. Home Rule. Political subdivisions that have the authority to adopt home rule charters imposing taxes, such as sales taxes, and pledge future revenues generated by the sales tax to the payment of the debt service on bonds issued in anticipation of sales tax receipts.

7. Municipal Industrial Act Bonds. MIDA bonds are not a debt of any kind to the issuer city or county unless the question of whether the issuer wants to grant a deficiency levy in the case of default by a 2/3ds vote of the voters of the issuer.

GENERAL INFORMATION RESOURCES

A. The Office of State Tax Commissioner publishes and posts on its web site a pamphlet entitled, "Schedule of Levy Limitations" that is an excellent quick reference source that sets out every purpose for which statutory authorized mill levies can be spread.

B. Cook Wegner & Wike PLLP has published three detailed booklets for use by political subdivision financial officers, governing body representatives and North Dakota banks that purchase bonds and debt instruments issued by political subdivisions, which are available without charge on request. They are:

Financing Options for North Dakota Cities
Financing Options for North Dakota Counties
Financing Options for North Dakota Water Districts
Special Assessments in North Dakota
A Bank's Guide to Tax Exempt Financing

These publications are available without charge on request.

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